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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland from 18 to 21 April 2016. The purpose of the mission was to reassess the situation pertaining to the freedoms of peaceful assembly and of association in the light of the first mission he undertook in 2013. The Special Rapporteur focused on the implementation of recommendations from his first report to various stakeholders. He also addressed new developments relevant to his mandate.

* Late submission.

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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland**

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** Circulated in the language of submission only

I. Introduction

1. Pursuant to Human Rights Council resolution 24/5, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, conducted a follow-up mission to the United Kingdom of Great Britain and Northern Ireland from 18 to 21 April 2016, at the invitation of the Government.

2. The purpose of the follow-up mission was to reassess the situation pertaining to the freedoms of peaceful assembly and of association in the light of the first mission he undertook from 14 to 23 January 2013. The Special Rapporteur focused on the implementation of recommendations from his report of 2013.[1] He also addressed new developments relevant to his mandate. Given the brevity of the mission, he examined only the situation in England.

3. The Special Rapporteur commends the Government for its excellent cooperation with the framework of his second mission, and for its continued willingness to constructively engage on human rights in general, and on the rights to freedom of peaceful assembly and of association in particular. A remarkable number of meetings were set up in London with members of the executive and legislative branches and of independent institutions. During his mission, the Special Rapporteur met with representatives from the Foreign and Commonwealth Office; the Home Office; the Cabinet Office; the Ministry of Justice; the Office for Security and Counter-Terrorism; the Crown Prosecution Service; the Metropolitan Police Service; Her Majesty's Inspectorate of Constabulary; the Joint Committee on Human Rights and the Home Affairs Committee of Parliament; the Independent Police Complaints Commission; the Equality and Human Rights Commission; the Charity Commission; and the Independent Reviewer of Terrorism Legislation. He thanks all those officials, whose input and assistance were very helpful.

4. The Special Rapporteur also thanks the many activists, members of civil society and other non-governmental interlocutors who took time out of their busy schedules to meet with him. These individuals were a diverse group, coming from many walks of life, working on a broad range of issues and hailing from a multitude of different backgrounds — religious, cultural, ethnic and otherwise. He was struck by their shared passion and commitment to making their communities better.

5. Finally, the Special Rapporteur reiterates his appreciation to the Government for its continuous support to his mandate, including on the occasion of the mandate's renewal in June 2016, and more generally for its sustained efforts at promoting and protecting the rights to freedom of peaceful assembly and of association and civil society space at the international level, including by co-sponsoring a number of dedicated Human Rights Council resolutions.

II. Right to freedom of association

A. Countering extremism and terrorism

1. *Prevent* strategy

6. One of the biggest concerns brought to the Special Rapporteur's attention during his mission was the Government's focus on countering non-violent extremism without a narrow and explicit definition, at the expense of basic human rights and fundamental freedoms. Many interlocutors identified the *Prevent* strategy as the epitome of the problem.

[1] A/HRC/23/39/Add.1

7. The *Prevent* strategy[2] is the second pillar of CONTEST, the State's counter-terrorism strategy.[3] The first version of CONTEST was published in 2006. *Prevent* aims to

> (a) respond to the ideological challenge [the country] face[s] from terrorism and aspects of extremism, and the threat [it] face[s] from those who promote these views, (b) provide practical help to prevent people from being drawn into terrorism and ensure they are given appropriate advice and support; and (c) work with a wide range of sectors (including education, criminal justice, faith, charities, online and health) where there are risks of radicalisation that [the authorities] need to deal with.[4]

Prevent focuses on individuals and groups who "vocal[ly] or active[ly] oppos[e] fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs"[5] and who are seen as being predisposed to respond positively to terrorist ideologies.

8. The Special Rapporteur sympathizes with the need to combat the scourge of terrorism in a comprehensive and forceful manner. This is without doubt one of the greatest challenges faced by countries today. However, this should not be done in disregard of fundamental freedoms. During his mission, the feedback he received from civil society on the impact of the *Prevent* strategy on the enjoyment of these freedoms was overwhelmingly negative. Students, activists and members of faith-based organizations related countless anecdotes of the programme being implemented in a way that translated simply into crude racial, ideological, cultural and religious profiling, with concomitant effects on the right to freedom of association of some groups.

9. For example, the duty imposed on certain categories of public officials, including teachers, to observe, record and report individuals they may consider "extremist" has led to undue restrictions on student union activities and the singling out of students from minority communities. In one instance, a 17-year-old student claimed he was targeted as he expressed his solidarity with the people of the State of Palestine by wearing a Palestine badge and scarf and distributing leaflets on the humanitarian situation there. The student was referred to the authorities under the *Prevent* strategy, and two police officers subsequently came to his house to question him on his views on Palestine, Israel and the Middle East.[6] The school denied to the media that the boy was referred for wearing the badge, but failed to provide an alternative explanation. In addition, environmentalists, anti-capitalist groups and some Members of Parliament have reportedly been provided as examples of extremists in *Prevent* trainings.

10. The Special Rapporteur concurs with civil society that the *Prevent* strategy is inherently flawed.[7] First, the guidance offered to decision makers in schools on how to apply the *Prevent* duty provides that "specified authorities are expected to assess the risk of children being drawn into terrorism, including support for extremist ideas that are part of

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[2] United Kingdom of Great Britain and Northern Ireland, Home Office, *Prevent Strategy* (London, The Stationery Office, 2011). Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf.

[3] United Kingdom, Home Office, *CONTEST: The United Kingdom's Strategy for Countering Terrorism* (London, The Stationery Office, 2011). Available from www.gov.uk/government/publications/counter-terrorism-strategy-contest.

[4] See www.gov.uk/government/publications/2010-to-2015-government-policy-counter-terrorism/2010-to-2015-government-policy-counter-terrorism.

[5] See United Kingdom, Home Office, *Revised Prevent Duty Guidance: For England and Wales* (2015), para. 7. Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance__England_Wales_V2-Interactive.pdf.

[6] See Rights Watch (United Kingdom), "Preventing education? Human rights and UK counter-terrorism policy in schools (July 2016), paras. 99-104. Available from http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3 compressed-1.pdf.

[7] Ibid., paras. 15-36.

terrorist ideology"[8] and that those authorities "need to demonstrate that they are protecting children and young people from being drawn into terrorism by having robust safeguarding policies in place to identify children at risk, and intervening as appropriate".[9] The Special Rapporteur believes that such unclear guidelines give excessive discretion to decision makers, which subsequently makes the overall application of *Prevent* unpredictable and potentially arbitrary, hence rendering it inconsistent with the principle of the rule of law.

11. Second, the guidance lists a set of indicators of vulnerability and risk which are overly broad, including "spending increasing time in the company of other suspected extremists", "changing [one's] style of dress or personal appearance to accord with the group", "communications with others that suggest identification with a group/cause/ideology", "clearly identifying another group as threatening what they stand for and blaming that group for all social and political ills" and "having occupational skills that can enable acts of terrorism".[10]

12. Third, in the Special Rapporteur's view, the *Prevent* strategy appears to draw a nearly automatic link between extremism and terrorism. However, British law makes a clear distinction between the two. The Terrorism Act 2000 defines terrorism as the "use or threat of action … designed to influence the government … or to intimidate the public or a section of the public … for the purpose of advancing a political, religious or ideological cause".[11] "Extremism", meanwhile, is vaguely defined in *Prevent* as "opposition to British values".

13. These flaws, combined with the encouragement of people to report suspicious activity, have created unease and uncertainty regarding what can legitimately be discussed in public. For instance, the Special Rapporteur was informed about teachers being reported for innocuous comments in class. The spectre of "Big Brother" is so large, in fact, that some families are reportedly afraid of even discussing the negative effects of terrorism in their own homes, fearing that their children would talk about it at school and have their intentions misconstrued.

14. Overall, it appears that *Prevent* is having the opposite of its intended effect: by dividing, stigmatizing and alienating segments of the population, *Prevent* could end up promoting extremism, rather than countering it. The Special Rapporteur was disappointed to learn that the Government announced in October 2016, following an internal review, that *Prevent* should be strengthened.[12] There was reportedly no public consultation during this review, which he considers particularly troubling in the light of the public concerns voiced by several stakeholders. He reiterates the call made by the Independent Reviewer of Terrorism Legislation,[13] the parliamentary Joint Committee on Human Rights,[14] the United Nations Committee on the Rights of the Child[15] and several civil society actors for an independent review of the strategy to be completed. Inputs from all relevant stakeholders should be sought in such processes.

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[8] See United Kingdom, Home Office, *Revised Prevent Duty Guidance*, para. 67.

[9] Ibid., para. 68.

[10] See United Kingdom, Home Office, *Channel Duty Guidance: Protecting Vulnerable People From Being Drawn Into Terrorism* (2015), paras. 51-53. Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf.

[11] See United Kingdom, Terrorism Act 2000, chap. 11, sects. 1-4 (2000).

[12] United Kingdom, House of Lords Hansard, *Prevent Strategy*, vol. 776, 26 October 2016. Available from https://hansard.parliament.uk/lords/2016-10-26/debates/D21E35A2-D38C-4D46-9201-A9FE5643FF2D/PreventStrategy.

[13] David Anderson, "Independent reviewer of terrorism legislation", oral evidence to the Joint Committee on Human Rights, Q23, in HC 836, "Counter-terrorism and human rights", 26 November 2014.

[14] United Kingdom, Parliament, Joint Committee on Human Rights, "Government should consider extremist strategy", 22 July 2016. Available from www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2015/counter-extremism-report-published-16-17/.

[15] See CRC/C/GBR/CO/5, para. 22 (b).

2. Counter-Extremism and Safeguarding Bill

15. In 2015, the Government announced the introduction of a counter-extremism bill, which was later renamed the Counter-Extremism and Safeguarding Bill. The bill may authorize the issuance of civil orders to, inter alia, ban non-violent extremist groups, stop individuals engaging in extremist behaviour and close down premises used to support extremists. The Special Rapporteur notes that the bill has not been introduced before Parliament. He nevertheless warns against any future introduction, as the bill is highly problematic.

16. The Special Rapporteur is troubled that the bill apparently seeks to use civil orders with a view to circumventing the opening of criminal cases, which have a higher standard of proof. Even more problematic, however, is the intrinsic vagueness of the term "non-violent extremism" that the bill employs. Government officials themselves seemed to have trouble defining the term, which signals vast potential for arbitrary and abusive interpretation. The Special Rapporteur is deeply worried about the possible negative unintended consequences of such provisions. It is indeed difficult to define the term "non-violent extremist" without treading into the territory of policing thought and opinion. Innocent individuals would be targeted. Many more would fear that they might be targeted — whether because of their skin colour, religion or political persuasion — and be fearful of exercising their rights. Both outcomes would be unacceptable.

17. It is the duty of the Government — and indeed of all States — to do all it can to prevent, limit and mitigate potential terrorist attacks that could arise from extremism. The Special Rapporteur believes that the existing legal framework is robust enough to deal with any issues of extremism and related intolerance that could give rise to terrorism. In this regard, he echoes the findings of the Joint Committee on Human Rights, which stated that the "Government should not legislate, least of all in areas which impinge on human rights, unless there is a clear gap in the existing legal framework. The Government has not been able to demonstrate that such a gap exists. We therefore take the view that the Government has not demonstrated a need for new legislation … [and] any new legislation may prove counter-productive".[16]

3. Undue restrictions on the use of funds by associations

18. In his report of 2013, the Special Rapporteur noted that Muslim organizations registered in the United Kingdom and other charities operating in countries deemed sensitive face serious difficulties in transferring and spending funds.[17] He was apprised by civil society that such difficulties remain. The Charity Finance Group conducted an analysis of the problems encountered by charities in this context, which include international transfers delayed or denied by banks in the United Kingdom and corresponding banks based in foreign countries, funds frozen due to banks' due diligence processes, delays in opening bank accounts and accounts closed.[18]

19. The Special Rapporteur raised the issue of restrictions on the use of funds by charities with the Charity Commission, which informed him that charities are provided with guidance to help them identify and mitigate risks of abuse for extremist purposes or terrorism financing. The Commission is also working with sections of the Government and the banking sector to raise concerns about the impact of de-risking and de-banking on the sector.

20. While noting these efforts with satisfaction, the Special Rapporteur thinks that the Commission and all agencies concerned can do more to ensure that charities and other

[16] See United Kingdom, Parliament, Joint Committee on Human Rights, *Counter-Extremism* (2015), para. 106. Available from www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/105/10502.htm.

[17] See A/HRC/23/39/Add.1, para. 84.

[18] Charity Finance Group, "Briefing: impact of banks' de-risking on not for profit organizations", March 2015. Available from www.cfg.org.uk/Policy/~/media/Files/Policy/Banking/Briefing%20%20Impact%20of%20banks%20derisking%20activities%20on%20charities%20%20March%202015.pdf.

groups are not subjected to de-risking or de-banking where there are other options for mitigating or managing risk. Charities that work in high-risk areas frequently serve the most vulnerable and desperate, often performing what governments ask of them. De-risking has serious consequences not just on the rights of charities to associate, but also on the rights of their beneficiaries. Moreover, the Government of the United Kingdom and the British public have an interest — public safety — in keeping charities within the official banking system, and not pushing them into the underground economy.

21. The Special Rapporteur notes with appreciation the important role the United Kingdom played in 2016 in updating, following a dialogue with civil society, recommendation 8 on non-profit organizations of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation of the Financial Action Task Force. This recommendation provides that: "Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to [these] organisations to protect them from [such] abuse."[19]

22. To achieve this result, the interpretive note to this recommendation stresses that States should, inter alia, (a) take into account "the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to terrorist financing abuse [and] the need to ensure that legitimate charitable activity continues to flourish"; (b) show "flexibility in developing a national response to terrorist financing abuse" of non-profit organizations; and (c) apply "focused measures [which] should … promote accountability and engender greater confidence among [such organizations], across the donor community and with the general public, that charitable funds and services reach intended legitimate beneficiaries".[20] The Special Rapporteur is hopeful the Government will be guided by these sound principles in its action to combat terrorist financing.

23. Finally, the Special Rapporteur stresses that banks also have a key role to play regarding this issue. He echoes the recommendations made by the Charity Finance Group to banks to better understand the activities of their charities' clients, give them fair warning where enhanced checks are required with a view to avoiding delays, work with them to secure compliant and safe transfers of funds across borders and challenge internal inconsistencies and inconsistencies with correspondent banks abroad.[21]

4. Investigatory Powers Act 2016

24. At the time of the mission, the Special Rapporteur raised concerns about the Investigatory Powers Bill governing, inter alia, the interception of communication, equipment interference and the acquisition and retention of communications data, and the treatment of material held as a result. On 29 November 2016, the Investigatory Powers Act was given royal assent and became law.[22]

25. In his report of 2013, the Special Rapporteur recommended that authorities adopt a law on intelligence gathering with a view to increasing the accountability of services.[23] However, the enactment of this law has been regrettably controversial. In December 2015, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, he sent a submission to the Joint Committee on the Draft Investigatory

[19] See Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF recommendations* (Paris, 2016), sect. C, para. 8. Available from www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-outcomes-june-2016.html.

[20] Ibid., Interpretative note to recommendation 8, para. 4 (d).

[21] Charity Finance Group, "Briefing", p. 7.

[22] United Kingdom, Investigatory Powers Act 2016, chap. 25 (2016). Available from http://services.parliament.uk/bills/2015-16/investigatorypowers.html.

[23] See A/HRC/23/39/Add.1, para. 93.

Powers Bill.[24] While welcoming the public legislative scrutiny to which the bill was subject, they regretted that civil society, the private sector, the technical community and all interested stakeholders were not given sufficient time to provide meaningful input on such an important draft law.[25]

26. The Special Rapporteurs expressed concern in relation to a number of provisions contained in the bill, including clause 61 on the authorization of warrants for journalists' communications data, clauses 71 to 73 on notices for the retention of communications data and clauses 106, 107, 109 and 112 on bulk interception warrants.[26] They concluded that the bill contained procedures without adequate oversight, coupled with overly broad definitions, which might result in unduly interfering with the right to privacy, the right to freedom of opinion and expression and the right to freedom of association, both inside and outside the United Kingdom.[27] These concerns remain valid, as the bill passed into law without substantial changes.

27. Under the Act, "thematic warrants" — which target a group or category of people without requiring each target of the surveillance to be individually identified — can be used when a "serious crime" is suspected to have been committed. The definition of "serious crime" in the Act is defined as a crime "where … the conduct involves the use of violence, results in substantial financial gain or *is conduct by a large number of persons in pursuit of a common purpose*".[28] Such a definition is overly broad, and thematic warrants consequently fail to target specific individuals on the basis of a reasonable suspicion. In addition, the Act stipulates that the Secretary of State will authorize the use of powers after review by the Investigatory Powers Commissioner and judicial commissioners to be appointed by the Prime Minister, hence putting into question the independence of such an oversight mechanism.[29]

28. The Special Rapporteur is extremely worried that such strong and intrusive powers are bound to have a detrimental impact on the legitimate activities carried out by civil society and political activists, whistle-blowers, organizers and participants of peaceful protests, and many other individuals seeking to exercise their fundamental freedoms.

B. Restrictions to civil society's advocacy work

1. Transparency of Lobbying, Non-Party Campaigning and Trade Union Act 2014

29. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014,[30] also known as the Lobbying Act, is also of concern to the Special Rapporteur. The Act amended current legislation which requires campaigners, including charities, to register as non-party campaigners with the Electoral Commission if their spending during an election period passes a certain threshold, and if their activities can be perceived as intended to influence how people vote.

30. The Special Rapporteur repeatedly heard that this Act has had a chilling effect on the work of charities during election periods, with many opting for silence on issues they

[24] Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, Submission to the Joint Committee on the draft Investigative Powers Bill, 21 December 2015. Available from www.ohchr.org/Documents/Issues/Opinion/Submission_UN_Special_RapporteursJan2016.pdf.

[25] Ibid., para. 20.

[26] Ibid., paras. 10-15.

[27] Ibid., para. 21.

[28] See United Kingdom, Investigatory Powers Act 2016, sect. 263 (1) (emphasis added).

[29] Ibid., sects. 227-228.

[30] United Kingdom, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014*, chap. 4 (2014). Available from http://services.parliament.uk/bills/2013-14/transparencyoflobbyingnonpartycampaigningandtradeunionadministration.html.

work on.[31] Charities have been reluctant to register, fearing that it would be misunderstood as engaging in prohibited party political activity. During the 2015 general election, for instance, fewer than 60 organizations decided to register with the Electoral Commission as non-partisan campaigners.[32]

31. The Special Rapporteur notes with great interest the report of the Commission on Civil Society and Democratic Engagement, which was established in September 2013 in response to a series of concerns in relation to Part 2 of the Lobbying Act and its potential "chilling effect" on campaigning. The Commission stated that: "The Act has now been tested and considerable evidence shows it has had a negative impact on charities and campaign groups speaking out on crucial and legitimate issues ahead of the election .... [M]any charities and campaign groups have faced [challenges] in implementing the Act, including confusion about the ambiguity of the definition of regulated activity."[33] The Commission recommended repealing Part 2 of the Act before the May 2016 devolved administration election.[34] Furthermore, the Commission proposed to amend the Act with a view to adopting a new definition of "regulated activity" which would "clarify that campaigning should be regulated only when it is clear that the subjective intention is to influence the outcome of an election, rather than to raise awareness and generate discussion amongst competing parties and candidates".[35]

32. In 2015, the Government launched the Third Party Campaigning Review, an independent review to assess the regulatory system for third-party campaigning in the context of the 2015 general election. The Reviewer concluded that it was necessary to maintain Part 2 of the Lobbying Act in order to ensure that an election could not be unduly influenced by individuals or organizations through excessive spending.[36] He conceded, however, that the definition of "regulated activity" in the legislation had led to

> too much ambiguity about what expenditure on campaigning activity is regulated and consequently has had some perceived "chilling effect" on the activities of third parties .... If the expenditure of third parties is to be limited to prevent undue influence then it should only include the costs of activities that are actually *intended* by the third party to influence voters. Therefore ... the statutory definition needs to be changed to one of *actual intention*.[37]

33. The Special Rapporteur welcomes this proposal, and looks forward to the Government taking positive measures to implement it, cautioning that care must be taken in this regard.

34. Finally, the Special Rapporteur is concerned that the Lobbying Act has a disproportionate impact upon civil society and trade unions vis-à-vis businesses. This is because Part 1 of the Act does not restrict the activities of in-house lobbyists, who enjoy the most influence in the Government by far, and who overwhelmingly work for business

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[31] See, for example, Charities Aid Foundation, "Do as I say, not as I do: UK policy and the global closing space for civil society — a 2017 update", Giving Thought discussion paper, No. 5 (2017), pp. 15-18. Available from www.cafonline.org/docs/default-source/about-us-policy-and-campaigns/updated-do-as-i-say-not-as-i-do-january-2017.

[32] Ibid., p. 15.

[33] Commission on Civil Society and Democratic Engagement, "Non-party campaigning ahead of elections: consultation and recommendations relating to part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Bill", Report 4, 4 September 2015, p. 6. Available from http://civilsocietycommission.info/wp-content/uploads/2013/09/FINAL-Civil-Society-Commission-Report-no4-Sept-2015.pdf.

[34] Ibid., p. 8.

[35] Ibid., p. 10.

[36] United Kingdom, Third Party Campaigning Review, *Third Party Election Campaigning: Getting the Balance Right — Review of the Operation of the Third Party Campaigning Rules at the 2015 General Election* (London, Williams Lea Group, 2016). Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/507954/2904969_Cm_9205_Accessible_v0.4.pdf.

[37] Ibid., para. 1.9.

interests.[38] It is important that the Government follow a policy of sectoral equity[39] in its treatment of businesses and associations, so that civil society organizations are able to operate in an environment at least as favourable as the one provided for businesses.

2. New grants standards

35. The announcement by the Cabinet Office in February 2016 that a new "anti-advocacy clause" would be inserted in all new and renewed Government grant agreements, prohibiting these funds from being used to lobby Government and Parliament, also caused confusion and uncertainty within civil society at the time of the Special Rapporteur's mission.[40] The clause met with a barrage of criticisms from civil society actors since they were not consulted on the issue in the first place, and they considered it an effort to further silence them if they received governmental funds.[41]

36. The Special Rapporteur raised the issue with the Cabinet Office, which responded that it was then consulting on the clause. On 27 April 2016, the Government decided to pause the implementation of the policy pending the review of all comments received, which was welcome.[42]

37. In December 2016, the Cabinet Office announced a set of new standards in relation to the handling of government grants.[43] The Special Rapporteur notes with satisfaction that civil society was consulted in the framing of the standards, which provide far better guidance on the topic than the anti-advocacy clause. Standard 6 on "robust grant agreements" provides that: "Details of eligible expenditure [must be] included in all … grant agreements …. The terms must be sufficiently clear to provide assurance that the grant is only used for the purposes for which it was awarded. By definition, this will preclude activity such as paid for political lobbying, unless a specific requirement of the grant, or expenses aimed at exerting undue influence."[44] As a result, activities such as

> giving evidence to Select Committees; attending meetings with Ministers or officials to discuss the progress of a taxpayer funded grant scheme; responding to public consultations, where the topic is relevant to the objectives of the grant scheme …; providing independent, evidence based policy recommendations to local government, departments or Ministers, where that is the objective of a taxpayer funded grant scheme …; and providing independent evidence based advice to local or national government as part of the general policy debate, where that is in line with the objectives of the grant scheme[45]

are now allowed.

38. The Special Rapporteur welcomes the overall clarity provided by the new grants standards. He warns, however, against the vagueness of the term "undue influence", which

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[38] Transparency International-United Kingdom, "Lobbying is not the problem: abusing the system is", 24 February 2015. Available from www.transparency.org.uk/lobbying-not-the-problem-abusing-the-system-is/.

[39] See A/70/266.

[40] United Kingdom, Cabinet Office, "Government announces new clause to be inserted into grant agreements", 6 February 2016. Available from www.gov.uk/government/news/government-announces-new-clause-to-be-inserted-into-grant-agreements.

[41] See, for example, Charities Aid Foundation, "Do as I say, not as I do".

[42] United Kingdom, Cabinet Office, "Update on a new clause to be inserted into grant agreements", 27 April 2016. Available from www.gov.uk/government/news/update-on-a-new-clause-to-be-inserted-into-grant-agreements.

[43] United Kingdom, Cabinet Office, "New standards announced for government grants", 2 December 2016. Available from www.gov.uk/government/news/new-standards-announced-for-government-grants.

[44] United Kingdom, Cabinet Office, "Government grants minimum standards", 21 November 2016. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/573795/minimum_grant_standard_6_grant_agreements_16_11_2016.pdf.

[45] Ibid.

can be interpreted in an arbitrary manner. It is important to exert caution when invoking the term, so as not to hamper the important work and independence of civil society.

3. Guidance regarding the referendum on membership in the European Union

39. In March 2016, the Charity Commission published new guidance for charities with regard to their engagement with the referendum on the membership of the United Kingdom in the European Union, scheduled to occur in June 2016. The guidance was described as confusing by the members of civil society the Special Rapporteur met with. Under the guidance, charities were called to consider whether, inter alia, the political activity intended supported, and was incidental to, their purposes, and whether potential conflicts of interest and other risks were properly managed. It also stated that: "The aims and impact of the [European Union] Referendum, whether the outcome is remaining in or leaving the [European Union], are clearly wider than the objects of a charity. This means that it will inevitably be by exception that charities would reach a decision to engage in political activity on the referendum."[46]

40. The Special Rapporteur echoes the assessment of the guidance made by a law firm, which concluded that the guidance, inter alia, misrepresented the law on campaigning and was not consistent with the terms of the Charity Commission's guidance on campaigning and political activity (the "CC9").[47] He notes that the Charity Commission subsequently amended its guidance to take into account some of the concerns raised, most notably stating that charities were only engaging in political activity if the engagement could reasonably be seen as influencing the outcome.

41. In addition, the Special Rapporteur found it regrettable that the Charity Commission sent the guidance to journalists before sharing it with those most concerned — the charities — as it emerged when a newspaper wrote a story condemning environmental civil society organizations.[48]

C. Trade unionism

42. At the time of the mission, the Special Rapporteur's major concern in the area of labour rights centred on the Trade Union Bill, which was then in Parliament for examination. On 4 May 2016, the bill received royal assent, becoming the Trade Union Act 2016.

43. In February 2016, the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization had issued a report highlighting a number of serious concerns with the bill, which the Special Rapporteur shared.[49]

44. The Government subsequently addressed a number of issues following consultation with various stakeholders. Consideration of their views resulted in a number of proposals being dropped from the bill, including a requirement for the annual reporting of picketing and protesting activities, and for detailed plans about pickets and social media campaigns to

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[46] United Kingdom, Charity Commission, *The European Union Referendum: The Charity Commission's Regulatory Guidance for Charities*, 7 March 2016. Available from www.sheffield.ac.uk/polopoly_fs/1.570153!/file/CharityCommissionEURefGuidance.pdf.

[47] Bates Wells Braithwaite, "Briefing on Charity Commission guidance", 14 March 2016. Available from www.bwbllp.com/file/bwb-briefing-on-eu-referendum-guidance-final-18-march-pdf.

[48] Ben Riley-Smith, "EU referendum: Britain's biggest environmental charities using public cash to call for In vote", *Telegraph*, 7 March 2016. Available from www.telegraph.co.uk/news/newstopics/eureferendum/12184133/EU-referendum-Britains-biggest-environmental-charities-using-public-cash-to-call-for-In-vote.html.

[49] International Labour Organization (ILO), *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part 1A)* (Geneva, 2016). Available from www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_448720.pdf.

be published two weeks in advance. This is most welcome. The Special Rapporteur urges the Government not to reintroduce these provisions in the future.

45. The Special Rapporteur's greatest concern with the Trade Union Act is the new threshold requirements introduced regarding industrial action by unions in "important public services". The Act requires that 50 per cent of members turn out to vote on industrial actions, and that at least 40 per cent of the entire membership, assuming the 50 per cent minimum turnout is met, votes in favour of the action.[50] In effect, it means a requirement of 80 per cent "yes" votes if only 50 per cent of the membership turns out. The Committee of Experts on the Application of Conventions and Recommendations had called on the Government to amend the bill so that the aforementioned 40 per cent requirement did not apply to education and transport services.[51] The Government suggested that the requirement was necessary because industrial actions have an impact upon wider society, beyond workers and employers. The Special Rapporteur is not convinced by that argument, and considers such an approach profoundly undemocratic. He believes the logic behind the requirement is disingenuous, as the same reasoning would never be applied to general elections, which surely have even more of "an impact upon wider society". More to the point, the referendum would have failed using the stringent requirements used for trade unions: only 37 per cent of eligible voters cast ballots in favour of the United Kingdom leaving the European Union.[52]

46. Parts of the Act also unduly restrict picketing. Under the Act, a union must appoint a picket supervisor whose name and contact details must be shared with the police.[53] Furthermore, the Certification Officer, a statutory office holder responsible for regulating trade unions, is granted broader powers to investigate unions' affairs[54] and access confidential records, such as the names and addresses of union members.[55] Finally, the Act does not recognize the use of electronic balloting for industrial action and strikes, something that has been long requested by unions. Rather, it allows only for an independent review of electronic balloting, including the security of the technology.[56] The review was announced in November 2016, and a call for evidence was made in March 2017. The outcome of the review will be presented to Parliament before the end of 2017.

47. The Special Rapporteur regrets that the Government decided to rush the bill to Parliament, despite admissions from officials that they anticipated extensive litigation over various provisions. He finds such an approach vexing, because the process of drafting legislation should be a meticulous one, where time is taken to ensure inclusiveness, clarity and conformity with other laws. He calls on the Government to amend the Trade Union Act with a view to ensuring its full compliance with international labour rights norms and standards.

III. Right to freedom of peaceful assembly

A. Undercover policing

48. One of the Special Rapporteur's main concerns in his report of 2013 concerned the use of undercover police officers to infiltrate non-violent groups exercising their right to

[50] See United Kingdom, Trade Union Act 2016, chap. 15, sects. 2-3 (2016). Available from www.legislation.gov.uk/ukpga/2016/15/contents/enacted.

[51] ILO, *Report of the Committee of Experts*, pp. 153-154.

[52] See www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information. http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information.

[53] See United Kingdom, Trade Union Act 2016, sects. 10 (2) (2) and (4).

[54] Ibid., schedule 1.

[55] Ibid., schedule 1, paras. 2 (3)-(5).

[56] Ibid., sect. 4.

freedom of peaceful assembly. The notorious Mark Kennedy case epitomized this disturbing practice with devastating consequences for survivors.[57]

49. Three years later, the Special Rapporteur welcomes the ongoing public judge-led inquiry on the use of undercover policing initiated in 2015, which he had called for in his first report.[58] This is much welcomed by all those who were deceived and violated at the State's behest in this scheme. Undercover policing serves a vital function in gathering intelligence on criminal groups such as terrorists and organized crime syndicates. However, its use against protest movements, environmentalists, leftist groups and others exercising their legitimate rights to dissent and peacefully assemble is not justifiable.

50. In order for the inquiry to be truly meaningful, the Special Rapporteur recommended at the end of his follow-up mission that it should not be shrouded in secrecy, especially in relation to undercover policing of protest groups. This would negate the very purpose of the exercise: to publicize State abuses, address those abuses and ensure that they do not occur again. The Special Rapporteur noted a statement the Home Office made during a meeting: that it did not support a blanket restriction on disclosure in this regard. On 3 May 2016, the judge leading the inquiry decided not to grant blanket anonymity to undercover officers who were implicated, and to approve on a case-by-case basis police applications for secrecy.[59]

51. The Special Rapporteur stresses once again that it is crucial that the views of the survivors, rather than those of the police, are given priority in this inquiry. It is important that the undercover identities of all officers who spied on peaceful activists be released. Survivors have a right to know that they were wrongfully spied upon, how intelligence collected may still be disrupting their lives and, if they were convicted, whether they may be able to overturn that conviction.

52. Furthermore, the Special Rapporteur notes with dismay the finding of the senior judge leading the inquiry that the police may have used the identities of up to 100 dead children in order to create their officers' covers. The police have reportedly admitted using the identities of 42 dead children.[60] He also remains deeply troubled by the issue of deceived women who, for years, had intimate relationships — and in some cases children — with undercover police officers: the resulting trauma for these women, and the subsequent suspicion among the groups, is shocking. It is of utmost importance that the police take full responsibility in relation to this appalling practice.[61]

53. This dark episode in the history of the United Kingdom has caused profound damage to the survivors and to people's comfort with exercising their rights to freedom of peaceful assembly and association, given the levels of mistrust that ensued. In a number of cases, the officers themselves have been traumatized as well. The damage can partly be remedied by imposing real accountability and transparency for the survivors, together with full reparation.

54. The Special Rapporteur notes the statement of the police that, since 2013, they have tightened procedures for authorizing undercover policing, and that the related oversight mechanism has been strengthened. This should translate in practice to mean that the police will no longer deploy undercover officers within non-violent activist groups.

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[57] See A/HRC/23/29/Add.1, paras. 24-28.

[58] See www.ucpi.org.uk/about-the-inquiry/.

[59] Rob Evans, "Judge in undercover policing inquiry rejects blanket anonymity", *Guardian*, 3 May 2016. Available from www.theguardian.com/uk-news/2016/may/03/undercover-policing-inquiry-judge-rejects-blanket-anonymity.

[60] Rob Evans and Paul Lewis, "Public inquiry into police spies issues appeal to bereaved parents", *Guardian*, 14 November 2016. Available from www.theguardian.com/uk-news/undercover-with-paul-lewis-and-rob-evans/2016/nov/14/public-inquiry-into-police-spies-issues-appeal-to-bereaved-parents.

[61] Rob Evans, "Woman deceived by undercover officer accuses police of delaying lawsuit", *Guardian*, 19 December 2016. Available from www.theguardian.com/uk-news/2016/dec/19/woman-deceived-by-undercover-officer-accuses-police-of-delaying-lawsuit.

55. He also recalls his joint report with the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, in which he stated:

> States should put in place clear democratic systems of control for undercover policing — through consistent legislation, regulations and policies — that explicitly incorporate necessity and proportionality tests and that set out clearly how risks of intrusion are to be assessed and managed. This should include an internal review process, as well as oversight by an independent, external body or bodies.[42]

B. Other issues of concern

1. Restrictions on organization of protests

56. In order to hold protests in Parliament Square Garden and in Trafalgar Square, organizers must seek permission from the Greater London Authority. The Greater London Authority instructs that

> Applications cannot be made more than 6 months in advance; organisers may not have any more than one application, for Parliament Square Gardens or Trafalgar Square, pending in the same period. Applications operate on a first come, first served basis and should be submitted at least 7 days before the activity but … the [Greater London Authority] may take up to 21 days from receipt to determine an application …. Only one public meeting will be allowed per day, and Trafalgar Square and Parliament Square Gardens cannot be booked for the same organisation on the same day.[43]

Furthermore, "activity duration should be no longer than 3 hours and during daylight hours".[44]

57. The Special Rapporteur first stresses that:

> Freedom of peaceful assembly is a *right and not a privilege* and as such its exercise should not be subject to prior authorization by the authorities. State authorities may put in place a system of prior notification, where the objective is to allow State authorities an opportunity to facilitate the exercise of the right, to take measures to protect public safety and/or public order and to protect the rights and freedoms of others. Any notification procedure should not function as a de facto request for authorization or as a basis for content-based regulation.[45]

58. In addition, the Special Rapporteur believes that the provisions of the Greater London Authority fall short of complying with the permissible restrictions under article 21 of the International Covenant on Civil and Political Rights, to which the United Kingdom is party. First, these provisions are not found in the relevant laws, and therefore fail to comply with the test of "prescribed by law"; second, it is highly debatable whether several of the restrictions, such as the limitations to one public meeting per day or one pending application per organizer, meet the test of "necessity in a democratic society".

59. Furthermore, the maximum duration of an activity to three hours during daylight hours constitutes a blanket ban, which, as the Special Rapporteur stated in the report of

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[42] See A/HRC/31/66, para. 78 (f).

[43] United Kingdom, Greater London Authority, "Application for public meetings, demonstrations and rallies in Parliament Square Garden". Available from www.london.gov.uk/sites/default/files/public_meetings_demonstrations_and_rallies_application_form_-_parliament_square_garden.pdf

[44] United Kingdom, Greater London Authority, "Application for public meetings, demonstrations and rallies in Trafalgar Square". Available from www.london.gov.uk/sites/default/files/public_meetings_demonstrations_rallies_application_form_-_trafalgar_square.pdf

[45] See A/HRC/31/66, para. 21 (emphasis added).

2013, is an "intrinsically disproportionate and discriminatory measure".[66] Equally worrying, under these provisions, spontaneous assemblies, by their very nature, are deemed illegal; the lengthy decision-making process (up to 21 days) is dubious (a notice period should be as short as possible, i.e., a maximum of several days and ideally 48 hours[67]); and organizers must possess a public insurance liability of at least £5 million, and bear the cost of cleaning and other contractor expenses, hence constituting a strong deterrent to the holding of protests.[68]

60. The Special Rapporteur also learned that the London Metropolitan Police had planned to impose additional costs on protest organizers to cover expenses related to security of businesses and traffic management,[69] and had instructed them to hire stewards for planned protests.[70] He underscores that "The State's obligation to facilitate [protests] includes the responsibility to provide basic services, including traffic management … Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision."[71] In addition, "authorities should not require organizers to provide stewards".[72]

2. Use of force and harassment

61. The Special Rapporteur raised concerns in his report of 2013 about instances of excessive use of force by the police against protestors. In the course of his follow-up mission, he was informed that such instances have continued to occur. One emblematic case which was brought to his attention was the violent action and harassment by the Greater Manchester Police against protestors at the Barton Moss Camp, Salford, Greater Manchester, from November 2013 to April 2014. The protestors were engaged in disruptive, yet peaceful, actions against the hydraulic fracturing ("fracking") operation conducted by the Ineos Energy company, which would cause severe environmental damage.

62. It is reported that the Greater Manchester Police frequently pushed and shoved peaceful protestors, stood on their heels, dug their knuckles in their backs, pushed them down the road and verbally harassed them.[73] Police officers also targeted a number of protestors, including young, elderly and disabled people, for allegedly triggering a "violent response" from fellow demonstrators.[74] Even more disturbing, male police officers reportedly engaged in sexual harassment with female protestors by, inter alia, insulting them, groping their private parts and pressing their genitals against them while walking in a line. As a result, many female protestors felt frightened and violated.[75] Unnecessary strip searches were also allegedly performed. The Special Rapporteur finds these practices shameful and totally unacceptable.

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[66] See A/HRC/23/39/Add.1, para. 13.

[67] See A/HRC/31/66, para. 28 (d).

[68] United Kingdom, Greater London Authority, "Application for public meetings, demonstrations and rallies in Trafalgar Square".

[69] Network for Police Monitoring, "Protest organisers reject police 'pay-to-protest' conditions", 19 February 2015. Available from https://netpol.org/2015/02/19/protest-organisers-reject-police-pay-to-protest-conditions/.

[70] Network for Police Monitoring, "Resisting the police's new 'pay-to-protest' policy", 11 February 2015. Available from https://netpol.org/2015/02/11/pay-to-protest/.

[71] See A/HRC/31/66, para. 40.

[72] Ibid., para. 49 (d).

[73] Joanna Gilmore, Will Jackson and Helen Monk, *Keep Moving: Report on the Policing of the Barton Moss Community Protection Camp — November 2013–April 2014* (Liverpool, Centre for the Study of Crime, Criminalisation and Social Exclusion and others, 2016). Available from https://curbyork.files.wordpress.com/2016/02/bm_final_170216_email.pdf.

[74] Ibid., p. 28.

[75] Ibid., p. 29.

63. Reports of excessive force were also received in relation to another anti-fracking protest held in Balcombe, West Sussex, in 2013 after the Special Rapporteur's first mission.[76]

64. In 2014, the police adopted the College of Policing's code of ethics,[77] which refers to the use of force, among other principles and standards of professional behaviour for the police. This is a laudable initiative, which should be abided by at all times.

65. Finally, the Special Rapporteur reiterates his concerns in relation to the use of containment (also known as "kettling"), which consists of deploying a police cordon around a group of protestors, often for long periods, with a view to enclosing them and preventing other protestors from joining the "kettled" group. It appears "kettling" has also been used for intelligence-gathering purposes.[78] "Kettling" leads to mass indiscriminate arrests and violates international human rights law and standards. He was informed that law enforcement authorities have continued to resort to this tactic, sometimes using buses to isolate the protestors, which has a powerful chilling effect on protestors seeking to exercise their peaceful assembly and expression rights.

3. Resorts to mass arrests, stop-and-search powers and dispersal powers

66. The Special Rapporteur also heard allegations that the police have continued to resort to mass arrests in the context of protests, such as the anti-fracking demonstrations in Balcombe and Barton Moss and an anti-fascism protest against the English Defence League in 2013, with a view to gathering intelligence on protestors. Most of the arrests did not even result in charges being brought against the protestors, suggesting that there was little legal basis for the arrests and that they may have been done for harassment purposes. The police have reportedly also continued to use stop-and-search powers against peaceful protestors.

67. The Special Rapporteur raised these issues with the authorities and was informed that, in 2014, the Home Office and the College of Policing launched the Best Use of Stop and Search Scheme, which aims at a more strategic use of the practice across England and Wales. One of the features of this Scheme is to reduce "no suspicion" stop and searches under section 60 of the Criminal Justice and Public Order Act 1994.[79] He was also informed that when a person is stopped and searched in the context of a protest, his or her name, age and address are not taken, but only information on the self-perceived ethnicity of the person or, where this is not given, the defined ethnicity as observed, is collected. Despite such assurances, the Special Rapporteur underscores the chilling effect of such practice among protestors. He recalls that: "Stop-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorized by law, necessary and proportionate. The mere fact that an individual is participating in a peaceful assembly does not constitute reasonable grounds for conducting a search."[80]

68. Another issue the Special Rapporteur had raised in his report of 2013, and which is still reportedly problematic, is the imposition of strict police bail conditions on detained protestors. He reiterates that these are strong deterrents that prevent protestors from the further exercise of their rights.

69. In addition, section 35, Directions excluding a person from an area, of the Anti-Social Behaviour, Crime and Policing Act 2014 has reportedly been used to disperse

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[76] Network for Police Monitoring, "Force not facilitation at fracking protests", 21 August 2013. Available from https://netpol.org/2013/08/21/force-not-facilitation-at-fracking-protests/.

[77] College of Policing, *Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales* (Coventry, United Kingdom, 2014). Available from www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf.

[78] See A/HRC/23/39/Add.1, paras. 36-38.

[79] United Kingdom, Home Office and College of Policing, *Best Use of Stop and Search Scheme* (2014). Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/346922/Best_Use_of_Stop_and_Search_Scheme_v3.0_v2.pdf.

[80] See A/HRC/31/66, para. 43.

peaceful protestors, as with hooligans. For instance, in November 2014, the Merseyside Police ordered the dispersal of a peaceful counter-demonstration against a protest planned by the far-right group National Front, although the latter, in the end, did not take to the street. In this regard, the Special Rapporteur reiterates that "the State's obligation to facilitate and protect assemblies includes simultaneous assemblies and counter-protests, in which one or more assemblies aim to express discontent with the message of other assemblies".[81] In another instance, dispersal orders were used against peaceful anti-fracking protestors in Cheshire. The resort to dispersal orders under this Act has been described on several occasions as an effective deterrent tool since protestors abide with the orders for fear of having their names put in the domestic extremist database.

70. Finally, another point of concern to the Special Rapporteur, directly related to the aforementioned issues, are the restrictions imposed on legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Under the Act, recipients of welfare benefits often have to financially contribute to their legal costs, hence deterring the resort to such aid. This problem must be seen in conjunction with the broader issue of lack of knowledge among the public about the availability of such aid. Free access to legal aid is crucial, especially in cases of mass arrests. Furthermore, placing systematic obstacles to protestors' abilities to defend themselves in court contributes to police impunity for abuses and increases the likelihood that these abuses will continue in the future. The Special Rapporteur is of the opinion that the aforementioned restrictions should be lifted, and that the Government should institute public information campaigns on the availability of free legal aid.

4. Domestic extremism and surveillance

71. The Special Rapporteur remains concerned over the reported targeting of peaceful protestors as "domestic extremists", and the fact that their identities are kept in intelligence databases. In his report of 2013, he expressed concern that the definition of "domestic extremism" was too broad, allowing for abusive interpretation, and that peaceful protestors feared that they could be easily grouped into this category alongside real and violent extremists.[82] From his discussions with civil society and government officials during this mission, the Special Rapporteur does not believe enough has been done to alleviate this concern.

72. In 2014, the police provided a "new working definition" of "domestic extremism" as "relati[ng] to the activity of groups or individuals who commit or plan serious criminal activity motivated by a political or ideological viewpoint".[83] The Special Rapporteur underscores that such a definition remains overly broad, especially when read in conjunction with the aforementioned provisions of the Investigatory Powers Act, which are also excessively large and unduly intrusive.

73. The Special Rapporteur notes with disappointment the decision of the Supreme Court in March 2015 overturning the Court of Appeal's judgment on the case of John Catt, a non-violent anti-war activist with no criminal record. The lower court had ruled unlawful the registration by the police of Mr. Catt's presence at more than 55 protests over four years in the National Domestic Extremism Database, which is maintained by the National Public Order Intelligence Unit. The police stated in its written submission before the Supreme Court that if Mr. Catt had suffered any interference with his right to respect for private and family life, it was "very slight"; that no file was kept on him, and only his name was mentioned in some intelligence reports; and that "the fact a person is mentioned in an intelligence report does not mean that the individual is suspected of any criminal offence (or reprehensible conduct) at all (and the references to Mr. Catt do not suggest

[81] Ibid., para. 24.

[82] See A/HRC/23/39/Add.1, paras. 34-35.

[83] Network for Police Monitoring, "So who exactly is now classified as a 'Domestic Extremist'?" (22 April 2014). Available from https://netpol.org/2014/04/22/new-definition-of-domestic-extremism/.

otherwise)".[54] The Special Rapporteur finds this reasoning worrying, as it means that the police are entitled to gather and keep information on anyone's political activities without suspicion of having committed any offence. An application in relation to the case has been lodged before the European Court of Human Rights.

74. The Special Rapporteur emphasizes the chilling effect this ruling has had on civil society as a whole. Some activists even spoke of a "climate of silence and fear".[55] In this regard, he was also dismayed to learn that two Green Party politicians were put on the National Domestic Extremism Database because of their political activities.[56] Jenny Jones, one of the two politicians labelled domestic extremists, later filed a complaint before the Independent Police Complaints Commission when a police whistle-blower revealed that the police had destroyed all the files it had compiled about her.[57] Such practice is deeply troubling, and should end immediately.

75. The Special Rapporteur also received information that the police may have used International Mobile Subscriber Identity catchers during peaceful protests in Birmingham (February 2016), London (February 2016), Leicester (April 2016) and in Wales (April and May 2016) to, inter alia, gather intelligence from protestors' mobile phones. Details on this practice have reportedly been shared with the judge leading the public inquiry on undercover policing, and there have been requests that the inquiry look into the subject.

76. The Special Rapporteur expresses serious concern about the use of International Mobile Subscriber Identity catchers at peaceful protests, which he believes constitutes a violation of the right to privacy and has a detrimental impact on the exercise of peaceful assembly and expression rights. It also has an acute chilling effect on protestors.

5. Protest liaison officers

77. In his report of 2013, the Special Rapporteur recommended that police separate the protest liaison function from intelligence gathering.[58] In the course of his follow-up mission, he was informed by the police that the protest liaison officers' programme has been instrumental in ensuring the smooth running of many protests. There is indeed great value in ensuring open and conducive dialogue between protestors and the police, and such dialogue should always be encouraged and strengthened.

78. However, the Special Rapporteur received several reports from civil society groups that protest liaison officers continued to be involved in gathering intelligence through their interaction with protestors, including at the Balcombe and Barton Moss protests. Such practice resulted in eroding trust and jeopardizing any genuine dialogue in relation to these protests.

79. In this regard, he recalls that:

> Law enforcement agencies should ensure there is an accessible point of contact within the organization before, during and after an assembly. The point of contact should be trained in communication and conflict management skills and respond to security issues and police conduct as well as to substantive demands and views

[54] See Supreme Court of the United Kingdom, *R (on the application of Catt) (AP) v. Commissioner of Police of the Metropolis and another; R (on the application of T) (AP) v. Commissioner of Police of the Metropolis*, case Nos. UKSC 2013/0114 and UKSC 2013/0112, judgments of 4 March 2015, para. 59 (d).

[55] As brought up during a private meeting with civil society representatives.

[56] Rob Evans and Owen Bowcott, "Green party peer put on database of 'extremists' after police surveillance", *Guardian*, 15 June 2014. Available from www.theguardian.com/politics/2014/jun/15/green-party-peer-put-on-database-of-extremists-by-police.

[57] Rob Evans, "Jenny Jones calls for IPCC to investigate alleged destruction of her police files", *Guardian*, 15 November 2016. Available from www.theguardian.com/uk-news/2016/nov/15/jenny-jones-calls-for-ipcc-to-investigate-alleged-destruction-of-her-police-files.

[58] See A/HRC/23/39/Add.1, para. 93.

expressed by the participants. The liaison function should be separate from other policing functions [including intelligence gathering].[89]

6. Private injunctions on the basis of collusion between police and private companies

80. The Special Rapporteur's attention was also drawn to the alleged collusion between law enforcement authorities and private companies in the context of protests against businesses. He was informed that protestors have been arrested and forced to provide their names and addresses, and then found their names as targets of private injunctions by the companies against further protest activity. This apparent sharing of information between police and private companies occurred, for instance, in the context of some anti-fracking protests.

81. The Special Rapporteur finds this alleged practice troubling, and fails to see its legal justification. He had raised the issue of private injunctions in his report of 2013, and reiterates the points he articulated in it.[90]

7. Accountability for police violations

82. Intrinsically linked to the question of the excessive use of force and sexual harassment is the issue of accountability and, more precisely, the identification of alleged perpetrators. In his report of 2013, the Special Rapporteur recommended law enforcement officers wear identification badges at all times.[91] However, in the course of his follow-up mission, he was informed that, on a number of occasions, police officers have failed to wear clearly visible identification while policing protests, in particular the Greater Manchester Police. The Special Rapporteur notes the statement from the Chief Superintendent at Scotland Yard acknowledging that there have been problems of police identification in a number of protests, and that he takes this issue seriously, holding supervisors accountable for police officers failing to abide.

83. The Special Rapporteur welcomes the fact that the Independent Police Complaints Commission, which is responsible for examining and investigating complaints about police conduct, has seen a notable increase of its resources, as he had recommended in his report of 2013.[92] However, he remains concerned that the Commission still reports to the Home Office, and not to Parliament, which fundamentally undermines protestors' trust in this institution. The Commission has recommended changing its reporting line to the Parliament, to no avail.[93] He urges the authorities to address this issue without delay.

IV. Conclusion and recommendations

A. Conclusion

84. **There is no doubt that the United Kingdom takes its role as one of the global leaders in human rights seriously. Many people around the world look to the United Kingdom as a model for democracy and respect for human rights and fundamental freedoms. They notice when the country takes positive steps to strengthen its practice in that area. However, they notice even more when it moves in the opposite direction.**

85. **The Special Rapporteur appreciates that the Government has made efforts to address some of the recommendations he made three years ago. However, he notes with concern that a series of separate measures by the Government, some**

[89] See A/HRC/31/66, para. 49 (d).
[90] See A/HRC/23/39/Add.1, paras. 47-49.
[91] Ibid., para. 93.
[92] Ibid.
[93] See United Kingdom, Home Office, *Reforming the Independent Police Complaints Commission: Structure and Governance — A Public Consultation* (London, 2015), paras. 19-22. Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/486700/20151216-IPCC_Governance_ConDoc-WEB-v6_0-UK_O__3_.pdf.

implemented and others proposed, have negatively impacted the exercise of the rights to freedom of association and freedom of peaceful assembly and, in general, are resulting in the closing of space for civil society. In many instances, these moves have been subtle and gradual, but they are as unmistakable as they are alarming. He is concerned that, put together, these measures suggest that the Government has a negative view of civil society as a critical partner that can and should hold it accountable.

86. Beyond the borders of the United Kingdom, these measures are likely to have serious implications if adopted by other States whose intention is to repress civil society. It is imperative that the same standards on civil society space that the Government calls for internationally are implemented domestically.

87. The United Kingdom should truly consider its civil society a national treasure. It epitomizes the kind of "unity through diversity" that civil society can so uniquely foster. The Special Rapporteur believes that these individuals — and the hundreds of thousands of people like them — are the reason for many of the positive attributes that are enjoyed in the country.

88. The United Kingdom faces uncertain times at the domestic level, following the vote to leave the European Union and the several security and geopolitical challenges at the global level. But it is of utmost importance during these trying times that the country preserve, and even expand, civil society space so women and men can contribute, through the exercise of their association and assembly rights, to the consolidation of democracy and realization of human rights and fundamental freedoms in the country and abroad.

89. The Special Rapporteur offers the following recommendations once again in a spirit of constructive dialogue. He hopes the recommendations will inform the Government in its efforts to ensure that its legal framework and practice are in full compliance with international human rights norms and standards governing the freedoms of association and peaceful assembly.

B. Recommendations

Right to freedom of association

90. The Special Rapporteur calls on the competent authorities to:

(a) Allow an independent review of the *Prevent* strategy to determine its impact upon the enjoyment of fundamental freedoms, including freedoms of association and peaceful assembly, with a view to amending/repealing it; this review should seek inputs from all relevant stakeholders;

(b) Not introduce the Counter-Extremism and Safeguarding Bill before Parliament;

(c) Make greater efforts to ensure that charities and other groups are not subjected to de-risking or de-banking where there are options for mitigating or managing risk;

(d) Uphold recommendation 8 on non-profit organizations of the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation of the Financial Action Task Force, and its interpretive note;

(e) Amend the Investigatory Powers Act 2016 to address the issues of concern identified in the present report, and to bring it into compliance with international human rights norms and standards governing the right to privacy, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and the right to freedom of association;

(f) Clarify the definition of "regulated activity" under the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 by

introducing the notion of "actual intention", and proceed with care at the implementation level;

(g) Amend the guidance of the Electoral Commission to clarify what activities civil society groups are entitled to undertake;

(h) Amend the Trade Union Act 2016 to address the issues of concern identified in the present report, with a view to ensuring its full compliance with international human and labour rights norms and standards;

(i) Pursue a policy of sectoral equity in the treatment of businesses and associations;

(j) Request the Special Rapporteur on the right to education and the Special Rapporteur on freedom of religion or belief to undertake official missions to the United Kingdom.

Right to freedom of peaceful assembly

91. The Special Rapporteur calls on the competent authorities to:

(a) Adopt a positive law on the right to freedom of peaceful assembly whose purpose is to facilitate and protect such a right, in full consultation with civil society and other relevant stakeholders;

(b) Complete the ongoing public inquiry on undercover policing to the satisfaction of all survivors affected;

(c) Provide remedy to survivors of undercover policing and, where needed, to officers traumatized by this pernicious scheme;

(d) Release the undercover identities of all officers who spied on peaceful activists;

(e) Ensure that the oversight mechanism for undercover policing will no longer allow the deployment of undercover officers within non-violent activist groups;

(f) Investigate police use of International Mobile Subscriber Identity catchers in the public inquiry on undercover policing;

(g) Amend the Greater London Authority provisions in relation to the issues of concern identified to bring them into conformity with international human rights norms and standards governing freedom of peaceful assembly;

(h) Stop imposing costs on protest organizers to cover expenses related to commercial security and traffic management, and stop instructing them to hire stewards for planned protests;

(i) Ensure that the police always use force in a necessary and proportionate manner;

(j) End the practice of containment, or "kettling";

(k) Ensure that individuals are never categorized as domestic extremists as a result of their peaceful protest activity;

(l) Delete any records on peaceful protestors, political activists and other non-violent activists from the National Domestic Extremism Database and other intelligence databases;

(m) Ensure that the police protest liaison function is always separated from intelligence gathering;

(n) Stop using mass arrests and stop-and-search powers in the context of peaceful protests, including for intelligence-gathering purposes;

(o) Stop imposing stringent bail conditions on peaceful protestors;

(p) Stop using section 35 of the Anti-Social Behaviour, Crime and Policing Act 2014 in the context of peaceful protests;

(q) Stop enforcing private injunctions against peaceful protestors and, in this regard, end all forms of collusion between law enforcement authorities and private companies against protestors;

(r) Ensure free access to legal aid, and sensitize protestors on the availability of such aid;

(s) Ensure that the College of Policing's code of ethics is properly enforced;

(t) Ensure that law enforcement officers can be clearly identified at all times when intervening on protest sites, and that police commanders are held accountable when the officers under their authority do not comply;

(u) Ensure that law enforcement authorities who violate the right to freedom of peaceful assembly are held personally and fully accountable for such violations; in this regard, command responsibility must be upheld;

(v) Grant more powers to the Independent Police Complaints Commission by allowing the Commission to report to Parliament instead of the Home Office;

(w) Establish a protest ombudsperson before whom victims of violations in the context of protests can challenge official decisions, file complaints and seek reparation.

92. The Special Rapporteur calls upon civil society actors to:

(a) Continue their important advocacy and monitoring work in relation to the enjoyment of the rights to freedom of peaceful assembly and of association;

(b) Use every opportunity to participate in decision-making processes, including in relation to the elaboration of draft legislation;

(c) Follow up and monitor the implementation of the recommendations contained in the present report.